

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL NO. 1456

Civil Action No. 01-CV-12257-PBS

THIS DOCUMENT RELATES TO:

Judge Patti B. Saris

State of Montana v. Abbott Labs Inc., et al.,
02-CV-12084-PBS

DEFENDANT TAP PHARMACEUTICAL PRODUCTS INC.'S
MOTION FOR SUMMARY JUDGMENT

Dated: February 8, 2007

James R. Daly
Lee Ann Russo
Tina M. Tabacchi
JONES DAY
77 West Wacker Drive
Chicago IL 60601
Telephone: (312) 782-3939
Facsimile: (312) 7828585

Toni-Ann Citera
JONES DAY
222 East 41st Street
New York, NY 10017
Telephone: (212) 326-3939
Facsimile: (212) 755-7306

**Counsel for Defendant
TAP Pharmaceutical Products Inc.**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, TAP Pharmaceutical Products Inc. (“TAP”), by and through its attorneys, respectfully requests that this Court grant summary judgment in TAP’s favor on all remaining counts of Plaintiff State of Montana’s Second Amended Complaint on the ground that Plaintiff’s claims against TAP fail as a matter of law. The grounds for this motion are set forth in Memorandum in Support of Defendants’ Joint Motion for Summary Judgment and TAP’s Memorandum in Support of Its Motion for Summary Judgment.

In support of their motion, TAP submits herewith: (i) TAP Pharmaceutical Products Inc.’s Memorandum in Support of Its Motion for Summary Judgment, and (ii) TAP Pharmaceutical Products Inc.’s Local Rule 56.1 Statement of Undisputed Material Facts in Support of Its Motion for Summary Judgment. TAP incorporates the same as if fully set forth herein.

WHEREFORE, TAP respectfully requests that the motion for summary judgment be GRANTED.

REQUEST FOR ORAL ARGUMENT

Pursuant to LR 7.1, TAP believes that oral argument may assist the Court in resolving the issues presented in this motion and respectfully requests that oral argument be heard.

Dated: February 8, 2007

Respectfully submitted,

/s/ Toni-Ann Citera

James R. Daly
Lee Ann Russo
Tina M. Tabacchi
JONES DAY
77 West Wacker Drive
Chicago IL 60601
Telephone: (312) 782-3939
Facsimile: (312) 7828585

Toni-Ann Citera
JONES DAY
222 East 41st Street
New York, NY 10017
Telephone: (212) 326-3939
Facsimile: (212) 755-7306

Counsel for Defendant
TAP Pharmaceutical Products Inc.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

I hereby certify that counsel for TAP Pharmaceutical Products Inc. conferred with counsel for Plaintiff State of Montana on February 7, 2007, in a good faith effort to resolve or narrow the issues set forth herein, and counsel to the State of Montana indicated that the State of Montana does not assent to this motion.

/s/ Toni-Ann Citera

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2007, I caused a true and correct copy of the foregoing **DEFENDANT TAP PHARMACEUTICAL PRODUCTS INC.'S MOTION FOR SUMMARY JUDGMENT** to be served on all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2 in MDL 1456, a copy to LexisNexis File and Serve for Posting and notification to all parties.

/s/ Toni-Ann Citera